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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,589	09/30/2003	Roger Dillard Massengale	IFLOW.083C1	9933
20995 7590 08/29/2007 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER MACNEILL, ELIZABETH	
			ART UNIT 3767	PAPER NUMBER
			NOTIFICATION DATE 08/29/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/675,589

Applicant(s)

MASSENGALE, ROGER DILLARD

Examiner

Elizabeth R. MacNeill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-29 and 33-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-29 and 33-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 27-29 and 33-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elsberry (US 6,093,180) in view of Kling et al (US 4,412,832)

As to claims 27,29,34,35,37,40,41, and 44, Elsberry teaches a fluid pump (20), a length of tubing (16) securable to said pump, a catheter (22) securable to said tubing, said catheter comprising an infusion section (distal end) with a plurality of fluid exit holes (pores) and a fluid permeable, porous membrane (24) with acts as a filter (by filtering out bacteria) and a flow controller (by slowing the liquid passing through the pores) (Figs 3-5).

As to claims 28,33,38, and 39, Elsberry is silent on whether the length of tubing is bonded to the catheter and pump and provided as an integral unit. It is obvious to one of ordinary skill in the art that the tubing would be bonded to the pump and catheter in order to prevent leakage of the medicament, which would pose a serious risk of overdose to the patient. Secondly, it would be obvious to one of ordinary skill in the art at the time the invention was made to provide the catheter, tubing, and pump as an integral unit in order to prevent misplacement of the various parts before or during

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implantation and ensure that the bonds between the various parts do not become disconnected.

As to claim 43, Elsberry discloses that any implantable or extracorporeal pump may be used (Col 3 line 5). Compressible, elastomeric pumps are well known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an elastomeric pump as Elsberry discloses that any type of pump may be used.

As to claims 27,36,37, and 42, Elsberry does not teach the details of implanting the catheter and/or pump in the body.

Kling discusses a method of implanting a catheter (30) using a peelable introducer (12), a guide needle (20) and an introducer tubing (18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the introducer and guide needle of Kling in order to provide a means for sterile introduction of the catheter into the body. Furthermore, it would have been obvious to provide the introducer and pump/catheter assembly together in a kit in order to assist the surgeon in implantation by providing the necessary components together to avoid misplacing any one component.

Response to Arguments

3. Applicant's arguments with respect to claims 27-29 and 33-44 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth R. MacNeill whose telephone number is (571)-272-9970. The examiner can normally be reached on 9:00-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

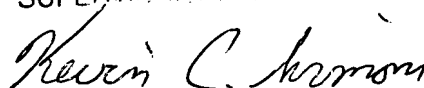
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ERM

Handwritten signature in black ink, appearing to read "ERM" or similar, with a stylized flourish.

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

Handwritten signature in black ink, reading "Kevin C. Sirmons" in a cursive style.